

Div. Bench
NF-100
(3) (1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P. No. 4118 of 2004

PETITIONER

Nami Singh Thakur, S/o. Late
Chandideen Thakur (Total Blind), aged
27 years, Occupation – Study (M.A. Final)
R/o. Village Jhulnakala, Tahsil – Mungeli,
District – Bilaspur (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh,
Through Secretary Social Welfare
Department, D.K.S. Bhawan, Raipur
(C.G.)
2. Director Panchayat & Social Welfare
D.K.S Bhawan, Raipur (C.G.)
3. Joint Director Panchayat &
Social Welfare, Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF

CONSTITUTION OF INDIA

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri D.R. Deshmukh, J.

WRIT PETITION NO.4118 OF 2004

Nami Singh Thakur

Versus

State of Chhattisgarh and Others

Present: Mrs. Hamida Siddique, Advocate for the petitioner.

Mr. Sanjay S Agrawal, Govt. Advocate for the respondents/
State of Chhattisgarh

ORDER

(Passed on 22nd of September, 2005)

The following oral Order of the Court was
passed by A.K. Patnaik, CJ: -

The petitioner is a blind person and has passed his 5th class examination in the year 1993 from the Blind School, Bilaspur. Since there were no facilities for education beyond 5th class for blind persons at Bilaspur, he went to Jabalpur and completed his school education in Jabalpur upto Class-X in the year 1996. Thereafter, he has completed his Higher Secondary School Studies at Jabalpur in the year 2000. He is presently studying M.A. in Jabalpur (M.P.). Having faced all these difficulties to pursue his studies as a blind person he has filed this writ petition on behalf of blind, deaf and dumb people in the State of Chhattisgarh as a public interest litigation and has stated in the writ petition that in the State of Chhattisgarh there is no educational institution for the

disabled including the blind from Class-VIII to Class-XII. He has also stated in the writ petition that none of the schools have hostel facility for girls and even the facilities of Library, Braille Books, Music System etc. are not available in the schools. The petitioner has accordingly prayed that appropriate directions be issued to the State Government to provide all these facilities.

(2). Return has been filed on behalf of the State of Chhattisgarh and it is stated therein that the Secretary, Social Welfare Department of Chhattisgarh has taken a decision for up-gradation of the Middle Schools for the blind, deaf and dumb students upto the Higher Secondary Schools. Pursuant to the said decision, the Superintendent, Government Blind and Deaf School, Raipur / Bilaspur has taken steps for recognition by the Board of Secondary Education, Chhattisgarh and the Government Blind and Deaf School at Bilaspur has already been granted such recognition upto the Higher Secondary level, but the Government Blind and Deaf School at Raipur is yet to be recognized by the Board of Secondary Education, Chhattisgarh. In the said return, it is also stated that National Association for the Blind, Branch Raipur has provided hostel facility as well as educational facility to the blind girls.

(3). Mrs. Hamida Siddique, learned counsel appearing for the petitioner submitted that the facilities so far provided in the State of Chhattisgarh are totally inadequate for the blind, deaf and dumb people. She submitted that there are no adequate number of hostels for the girls, Library, Braille Books, Music System etc. She also submitted that enough training facilities are not available in the said schools. She referred to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to show that the Government is

under obligation to provide all these facilities for the disabled persons including the blind, deaf and dumb persons.

(4). Mr. Sanjay S Agrawal, learned counsel appearing for the State of Chhattisgarh/ respondents, on the other hand, relying on the return filed by the respondents submitted that since the main relief in the writ petition was for providing education upto the Higher Secondary level for the blind, deaf and dumb has been granted by the Government itself, no further direction need be given in this case.

(5). Sections 26, 27, 28, 29, 30 and 31 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "*the Act, 1995*") make elaborate provisions regarding education of the disabled persons and the said sections are quoted herein below :

"26. Appropriate Governments and local authorities to provide children with disabilities free education, etc. –
The appropriate Governments and local authorities shall –

(a) ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;

(b) endeavour to promote the integration of students with disabilities in the normal schools;

(c) promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools;

(d) endeavour to equip the special schools for children with disabilities with vocational training facilities.



27. Appropriate Governments and local authorities to make schemes and programmes for non-formal education, etc. – The appropriate Governments and the local authorities shall by notification make schemes for –

- (a) conducting part-time classes in respect of children with disabilities who having completed education up to class fifth and could not continue their studies on a whole-time basis;
- (b) conducting special part-time classes for providing functional literacy for children in the age group of sixteen and above;
- (c) imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation;
- (d) imparting education through open schools or open universities;
- (e) conducting classes and discussions through interactive electronic or other media;
- (f) providing every child with disability free of cost special books and equipments needed for his education.

28. Research for designing and developing new assistive devices, teaching aids, etc. – The appropriate Governments shall initiate or cause to be initiated research by official and non-government agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education.

29. Appropriate Governments to set up teachers' training institutions to develop trained manpower for schools for children with disabilities. – The appropriate Governments shall set up adequate number of teachers' training institutions and assist the national institutions and

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other voluntary organizations to develop teachers' training programmes specializing in disabilities so that requisite trained manpower is available for special schools and integrated schools for children with disabilities.

30. Appropriate Governments to prepare a comprehensive education scheme providing for transport facilities, supply of books, etc. – Without prejudice to the foregoing provisions, the appropriate Governments shall, by notification, prepare a comprehensive education scheme which shall make provision for –

- (a) transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools;
- (b) the removal of architectural barriers from schools, colleges or other institutions imparting vocational and professional training;
- (c) the supply of books, uniforms and materials to children with disabilities, attending school;
- (d) the grant of scholarship to students with disabilities;
- (e) setting up of appropriate for a for the redressal of grievances of parents regarding the placement of their children with disabilities;
- (f) suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;
- (g) re-structuring of curriculum for the benefit of children with disabilities;
- (h) re-structuring the curriculum for the benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum.

31. Educational institutions to provide amanuensis to students with visual handicap. – All educational

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institutions shall provide or cause to be provided amanuensis to blind students and students with low vision."

(6) A reading of Section 26 of the Act, 1995 would show that the appropriate Governments and local authorities 'shall' ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years. Section 26 further provides that appropriate Governments and the local authorities "shall" promote setting up of special schools in Government and Private sector for those in need of special education in such a manner that children with disabilities living in any part of the country have access to such schools. The section also provides that appropriate Governments and local authorities will endeavour to equip the special schools for children with disabilities with vocational training facilities. Section 27 of the Act, 1995 casts obligation on the appropriate Governments and the local authorities to make schemes by notification for inter alia providing every child with disability free of cost special books and equipments needed for his education. Section 28 of the Act, 1995 provides that the appropriate Governments shall initiate or cause to be initiated research by official and non-government agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education. Section 30 of the Act, 1995 imposes an obligation on the appropriate Governments to prepare a comprehensive education scheme which shall make provision for inter alia supply of books, uniforms and materials to children with disabilities attending school. Section 31 of the Act, 1995 provides that all educational institutions shall provide or cause to be provided amanuensis to blind students and students with low vision.

(7). The aforesaid provisions have become the part of law of land since 1995 and yet the State Government has not taken steps to discharge their obligations under the aforesaid provisions of the Act, 1995. The language of the provisions of the Sections 26, 27, 28, 29, 30 and 31 of the Act, 1995 makes it clear that these are the statutory duties imposed on the appropriate Governments and /or local authorities. The law is well settled that the High Court can always issue a mandamus on the authorities to perform their statutory duties.

(8). Accordingly, we dispose of this writ petition with a direction that the State Government will ensure that within a year from today the three blind, deaf and dumb Government Schools at Bilaspur, Raipur and Jagdalpur are upgraded to 12th standard (Higher Secondary Education), and provide Braille Books, Music Systems, new assistive devises, teaching aids, special teaching materials and other items as are necessary to give a child who is blind, deaf and dumb, equal opportunities in education. The State Government will also make a comprehensive education scheme for supplying the books, uniforms and materials to such children who are blind, deaf and dumb attending the school and make all other facilities available as contemplated by the aforesaid provisions of the Act, 1995. The State Government will also find out as to whether the three existing Government Schools are sufficient to take care of the blind, deaf and dumb children in the State of Chhattisgarh for the purpose of their education and if the State Government finds that the three schools are inadequate, then it will take steps for opening up new schools in compliance of their aforesaid obligations under the Act, 1995.

Sd/-
Chief Justice

Subbu*

Sd/-
Dilip Raosaheb Deshmukh
Judge